



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Kickapoo Car Company

Case No. TR-99-0007

FINAL DECISION

On April 2, 1999, Vincent Anderson filed a claim against the motor vehicle dealer bond of Kickapoo Car Company. The claim was referred to the Division of Hearings and Appeals for hearing. The Administrative Law Judge gave the parties until August 4, 1999, to file any additional information they wished to have considered in issuing a preliminary determination in this matter. On August 2, 1999, Scott Freeman of Kickapoo Car Company submitted a letter and additional documentation. A Preliminary Determination based on the documentation contained in the file and required by sec. Trans 140.26(4)(a), Wis. Adm. Code, was issued on September 13, 1999. Scott Freeman filed an objection to the Preliminary Determination pursuant to sec. Trans 140.26(5)(b), Wis. Adm. Code. Pursuant to due notice a hearing under sec. Trans 140.26(6), Wis. Adm. Code, was conducted in this matter on December 2, 1999 in Gays Mills, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Vincent Anderson
204 Sunset Lane, #6
Boscobel, WI 53805

Scott Freeman d/b/a Kickapoo Car Company
P. O. Box 291
Gays Mills, WI 54631

Markel Insurance Company
P. O. Box 292220
Sacramento, CA 95829-2220

The Preliminary Determination issued in this matter awarded Vincent Anderson \$540.00 and ordered Mr. Anderson to surrender possession of the vehicle to the bonding company. The basis of this determination was that Mr. Anderson never received a Wisconsin title or registration

for the vehicle. Mr. Freeman objected to the Preliminary Determination because the order required the bonding company to repurchase the vehicle and did not deduct any amount from the original purchase price for Vincent Anderson's use of the vehicle during the last three years.

At the hearing Mr. Freeman testified that he did not submit the application for the title to the subject vehicle to the Wisconsin Department of Transportation because Mr. Anderson never paid him for the vehicle. Mr. Anderson testified that he paid \$540.00 for the vehicle. Although Mr. Anderson did not submit evidence that he had paid the contract price for the vehicle, it would be unusual for a dealer to turn over possession of a vehicle to a purchaser before he was paid. The fact that Mr. Anderson has possession of the vehicle indicates he did pay the purchase price of the vehicle. Additionally, throughout the Department of Transportation's investigation of Mr. Anderson's complaint and the Division of Hearings and Appeals handling of Mr. Anderson's bond claim, Mr. Freeman never claimed that he was not paid for the vehicle. Accordingly, it is found that Mr. Anderson did pay \$540.00 for the vehicle.

In addition to the \$540.00 purchase price of the vehicle, Mr. Anderson's bond claim included amounts for landscaping work he allegedly performed for Mr. Freeman and the value of two lawnmowers traded in for the vehicle. Mr. Freeman's response to the bond claim disputed these amounts. Mr. Freeman and Mr. Anderson were also involved in a real estate transaction that has resulted in litigation. Both parties attempted to bring other dealings into the vehicle purchase transaction. None of these other deals is reflected in the purchase contract. The purchase contract for this vehicle must be accepted on its face as incorporating the complete transaction related to the vehicle.

Additionally Mr. Anderson is claiming storage charges he allegedly paid for the vehicle during the time he could not lawfully operate the vehicle on the public highways and Mr. Freeman is arguing that a deduction for mileage should be made from the award. These claims are essentially a wash and neither will be allowed. After considering the evidence presented by the parties at the hearing in this matter, there is no reason to modify the Preliminary Determination issued in this matter. The Findings of Fact, Conclusions of Law, and Order following are essentially unchanged from the Preliminary Determination.

FINDINGS OF FACT

1. Kickapoo Car Company (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 145 Main Street, Gays Mills, Wisconsin.

2. The Dealer has had a bond in force from June 10, 1994 to the present date. (Bond #LP584370 from Capitol Indemnity Corporation from June 10, 1994 to July 10, 1996, Bond #96065851 from Markel Insurance Company, Sacramento, California, from May 31, 1996 to May 31, 1997, and Bond #96065851.1 from May 31, 1997 to the present).

3. On September 20, 1996, Vincent Anderson purchased a 1983 Oldsmobile Cierra, Vehicle Identification Number, 1G3AJ19E5DD442597, from the Dealer. According to the

purchase contract, Mr. Anderson paid \$540.00, including sales tax and license and registration fees, for the vehicle. The Used Vehicle Disclosure Label prepared by the Dealer for this vehicle indicates the odometer read 112,931 miles at the time the vehicle was sold.

4. In November, 1998, the Boscobel Police Department contacted Tom Rastall, an investigator for the Department of Transportation, Dealer Section, regarding Vincent Anderson operating the purchased vehicle without registration. After investigation, Investigator Rastall determined the Dealer had never submitted the title or application for title to the Department of Transportation.

5. On April 2, 1999, Vincent Anderson filed a claim in the amount of \$2,755.00 against the Dealer's motor vehicle dealer bond. The claim is itemized as follows:

Price Value of Vehicle	\$ 540.00
Bob-Cat Work Performed for Trade In on Car	\$ 525.21
Storage at Tom Brown's - August 97-98	\$ 300.00
Storage Unpaid at 5423 Superior Street – August 98 till Now	\$ 440.00
Lawn Mowers for Trade In	<u>\$ 950.00</u>
Claim Total	\$2,755.00

6. Mr. Anderson has not received the title to the vehicle and so is unable to lawfully operate or sell the vehicle. Accordingly, Mr. Anderson is entitled to a refund of the purchase price of the vehicle. In addition to the \$540.00 purchase price, Mr. Anderson is claiming \$1,475.21 for two lawnmowers and rental of a bob-cat. Mr. Anderson claims that the "trade" involved the use of a bob-cat and two 12 hp riding lawn mowers. The purchase contract does not reflect this "trade" agreement between the Dealer and the claimant. For purposes of this bond claim, it is found that Mr. Anderson paid \$540.00 to the Dealer for the vehicle.

With respect to the \$740.00 Mr. Anderson claimed for vehicle storage charges, the investigation report noted that Officer DuWayne Carlin of the Boscobel Police Department stated that Mr. Anderson has been stopped several times over the years due to the lack of registration for the vehicle. Additionally, at the hearing Mr. Anderson testified that the vehicle odometer currently registers "140 something" miles. Based on this testimony, the vehicle has been driven at least 27,000 miles since it was purchased. Therefore, it does not appear that Mr. Anderson has kept the vehicle in storage. The amounts claimed for vehicle storage, two lawn mowers and bob-cat rental are not allowed.

7. The Dealer's failure to submit the title and application for title for the vehicle purchased by Mr. Anderson to the Department of Transportation within seven business days of the purchase constitutes a violation of sec. 342.16, Stats. A violation of sec. 342.16, Stats., is, in turn, a violation of sec. 218.01(3)(a)14, Stats. Vincent Anderson sustained a loss of \$540.00 as a result of this violation.

8. The bond claim was filed within three years of the ending date of the period the Markel Insurance Company bond was in effect and is; therefore, a timely claim.

CONCLUSIONS OF LAW

1. Vincent Anderson's claim arose on September 20, 1996, the date he purchased the subject vehicle from Kickapoo Car Company. The surety bond issued to Kickapoo Car Company by Markel Insurance Company covers a one-year period commencing on May 31, 1996. The claim arose during the period covered by the surety bond.
2. On April 2, 1999, Vincent Anderson filed a claim against the motor vehicle dealer bond of Kickapoo Car Company. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.
3. Vincent Anderson's loss was caused by an act of Kickapoo Car Company that would be grounds for suspension or revocation of its motor vehicle dealer license. Mr. Anderson has submitted documentation to support a claim in the amount of \$540.00. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Vincent Anderson against the motor vehicle dealer bond of Kickapoo Car Company is APPROVED in the amount of \$540.00. Markel Insurance Company shall pay Mr. Anderson this amount for his loss attributable to the actions of Kickapoo Car Company and Mr. Anderson shall surrender possession of the vehicle to Markel Insurance Company.

Dated at Madison, Wisconsin on January 11, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By _____
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.